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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Bill English
Lee County Probate Judge
Post Office Box 2266
Opelika, Alabama 36803-2266

Probate Judges – Political Parties – Ballots
– Elections – Primary Elections –
Candidates – Signatures

Section 17-6-22 of the Code of Alabama requires the signatures of at least three percent of the qualified electors who cast ballots for the office of Governor in the last general election in Commission District 1 of Lee County.

A minor party seeking to qualify a candidate for an election in Lee County should have signatures from qualified electors residing in the specific district in which the party seeks to promote a particular candidate.

A minor political party is not required to file a statement of action pursuant to section 17-13-42 of the Code of Alabama because this provision is applicable only to major parties.

A minor party is not required to have a meeting pursuant to section 17-13-50(b) of the Code of Alabama.

Dear Judge English:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

How many elector signatures are required to qualify a candidate pursuant to section 17-6-22 of the Code of Alabama?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that on March 1, 2016, the Constitution Party of Alabama filed documents in the Lee County Probate Office nominating the party's candidate for Lee County Commission District 1 in this year's general election and reflecting the nominee's acceptance of the nomination. This party filed a petition with just over 500 signatures in an effort to gain ballot access for only Lee County Commission District 1. Lee County had 26,503 votes cast for Governor in the 2014 general election. You are unable to identify the number of persons living in Commission District 1 in November 2014 or how many of these electors voted in the Governor's race because commissioners serve staggered terms such that Lee County Commission District 1 elects its commissioners in presidential election years and not gubernatorial election years.

Section 17-6-22 of the Code of Alabama states as follows:

(a) No political party, except those qualified as a political party under Chapter 13, shall be included on any general election ballot unless:

(1) The party shall have filed with the Secretary of State or other appropriate official on the date of the first primary election a list of the signatures of at least three percent of the qualified electors who cast ballots for the office of Governor in the last general election for the state, county, city, district, or other political subdivision in which the political party seeks to qualify candidates for office; and unless

(2) The party shall have fulfilled all other applicable requirements of federal, state, or local laws.

(b) The provisions of this section are supplemental to the provisions of Chapter 13, and other laws regarding the conduct of elections in Alabama,

and shall repeal only those laws or parts of laws in direct conflict herewith.

ALA. CODE § 17-6-22 (2006).

Section 17-6-22 requires a party to file with, in this instance, the Lee County Judge of Probate, on March 1, 2016, the signatures of at least three percent of the qualified electors who cast ballots for the office of Governor in the last general election in the political subdivision in which the political party is seeking to qualify candidates. Nevertheless, this Office has explained that persons signing the petition are not required to have voted in the last gubernatorial election. Opinion to Honorable Lamar Turner, Henry County Probate Judge, dated August 24, 2000, A.G. No. 2000-220.

When it is difficult to identify the number of people in a particular district who cast ballots for the office of Governor, every effort should be made to determine a fair and reasonable method for deciding the number of votes cast. *See* opinion to Honorable Patricia Yeager Fuhrmeister, Judge of Probate, Shelby County, dated March 30, 2004, A.G. No. 2004-107. In *Fuhrmeister*, this Office provided two mathematical procedures that could be used to determine the number of votes cast in a particular commission district when multiple commission districts exist in certain precincts. The more simplified mathematical equation is appropriate here. *Fuhrmeister* noted that the total number of votes cast in the county for Governor could be divided by the total number of commissioner districts, and that number would then be multiplied by three percent to determine the number of signatures needed for a petition in each district. *Fuhrmeister* at 3.

Based on the information provided, in Lee County 26,503 votes were cast for the office of Governor in the 2014 general election. There are five commission districts in the county. As such, roughly 5,301 people cast votes for the office of Governor in each commission district. Three percent of that number is 159. Accordingly, the Constitution Party of Alabama needs to submit 159 signatures, which represents three percent of the reasonably estimated 5,301 votes cast in Lee County Commission District 1 for the office of Governor in the 2014 gubernatorial election.

CONCLUSION

Pursuant to section 17-6-22 of the Code of Alabama, the Constitution Party is required to submit the signatures of at least 159 electors who are registered to vote in Lee County Commission District 1. This number represents three percent of the qualified electors who cast ballots for the office of Governor in the last general election in District 1 of Lee County.

QUESTION 2

Must the petitioners be electors in Lee County Commission District 1, or can they reside anywhere in Lee County?

FACTS AND ANALYSIS

Next, you question whether the petitioners must be electors in District 1 of Lee County specifically or Lee County generally. Section 17-6-22 has previously been interpreted as requiring the petitioner to be qualified electors from the particular political subdivision in which the party seeks to qualify as a candidate. *Turner*; opinion to Honorable Mark Thornton, Lee County Constable, dated January 12, 1989, A.G. No. 89-00118; opinion to Honorable Don Siegelman, Secretary of State, dated July 5, 1983, A.G. No. 83-00368. As this Office has noted, the state “has a legitimate interest in limiting the ballot to serious contenders who are truly independent and demonstrate substantial community support.” Opinion to Honorable Nancy L. Worley, Secretary of State, dated August 18, 2004, A.G. No. 2004-205, at 3, *citing* opinion to Honorable Jim Bennett, Secretary of State, dated September 27, 1996, A.G. No. 96-00326, at 4. That support needs to be from the relevant community, which here is District 1. If the party had chosen to pursue ballot access for all of Lee County, rather than just District 1, then the signatures could have been from electors living throughout the county, and of course, the number needed would have increased.

The Constitution Party of Alabama needed to secure the signatures of qualified electors from District 1 of Lee County to gain ballot access for that particular district.

CONCLUSION

A minor party seeking to qualify a candidate for an election in a specific district of Lee County should have signatures from qualified electors residing in that specific district in which the party seeks to promote a particular candidate.

QUESTION 3

Is a minor political party required to file a statement of action pursuant to section 17-13-42 of the Code of Alabama? If so, would the failure of a party to make such a filing disqualify that party's petition?

FACTS AND ANALYSIS

Alabama law provides a two-track system by which a political party may have its name placed on a ballot for statewide and local elections: (1) a party must receive twenty percent of the votes cast in the last gubernatorial election, or (2) the party must gather three percent of the signatures of the qualified electors who cast ballots in the last gubernatorial election in the relevant jurisdiction. ALA. CODE § 17-6-22, § 17-13-40 (2006); *see Libertarian Party of Alabama v. Wallace*, 586 F. Supp. 399 (M.D. Ala. 1984). Based on the foregoing, although not so labeled in the Code, there are two types of political parties: (1) a major party—any party with automatic ballot access because of the party's ability to secure twenty percent of the votes cast in the gubernatorial election, and (2) a minor party—any party that must demonstrate support by petitioning for ballot access by collecting signatures of qualified electors.

Chapter 13 of title 17 of the Code of Alabama primarily sets forth the procedures applicable to primary elections. Your inquiry questions whether section 17-13-42 of the Code is applicable to a minor party. Section 17-13-42 of the Code of Alabama states as follows:

Primary elections are not compulsory. A political party may, by its state executive committee, elect whether it will come under the primary election law. All political parties are presumed to have accepted and come under the provisions of the primary election law, but ***any political party may signify its election not to accept and come under the primary election law by filing with the Secretary of State, at least 60 days before the date herein fixed for the holding of any general primary election, a statement*** of the action of its state executive committee, certified by its chair and secretary, which statement shall contain a copy of the resolution or motion adopted declining to accept and come under the primary election law. . . .

ALA. CODE § 17-13-42 (2006) (emphasis added).

This provision sets out the mechanism by which a political party may choose to participate in the primary process. *Id.* As noted earlier, section 17-13-40 defines the term “political party,” as that term is used in chapter 13, to mean a party that has received at least twenty percent of the votes cast in the last gubernatorial election. Thus, section 17-13-42 applies to major political parties, but is inapplicable to a minor political party. *See, generally, Reform Party of Alabama v. Bennett*, 18 F. Supp. 2d 1342, 1345 (M.D. Ala. 1998)

(stating that only major parties are governed by the provisions of chapter 16 of title 17, which is currently recodified in chapter 13 of title 17).

Moreover, minor parties are required to file ballot access petitions and the names of all candidates that are placed in nomination with the judge of probate or the Secretary of State on or before 5:00 p.m. on the day of the first primary election. ALA. CODE §§ 17-6-22, 17-9-3(a)(2) & 17-13-52 (2006). As such, the primary-ballot process is not available to a minor party.

Based on the response to the first part of Question 3, the second part of your inquiry is moot.

CONCLUSION

A minor political party is not required to file a statement of action pursuant to section 17-13-42 of the Code of Alabama because this provision is applicable only to major parties.

QUESTION 4

Does a convention held on March 1 qualify under section 17-13-50(b) of the Code of Alabama as having a meeting before the first primary election?

FACTS AND ANALYSIS

Section 17-13-50 of the Code of Alabama states as follows:

(a) When any political party shall desire to hold any mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of nominating any candidate or candidates for public office to be voted for in a general election in Alabama or for the purpose of selecting delegates or other representatives to any convention which may select such candidates for public office or when any such party shall desire to hold such mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of selecting committeemen, representatives, or other party officers of such party, all of such meetings shall be held as provided in this section.

(b) *All such meetings shall be held before the first primary election.* The general public is privileged to attend such meetings, but not to participate. *No less than five days prior to the* date upon which any such mass *meeting*, beat meeting, or other meeting is to be held, *notice* of such meeting, including the time and place of such meeting, *shall be filed with the judge of probate* of the county in which any such meeting is to be held and shall be published in a newspaper of general circulation in the county at the expense of the political party holding such meeting. The judge of probate shall immediately forward to the Secretary of State a certified copy of all notices filed under this section.

ALA. CODE § 17-13-50 (2006) (emphasis added).

This particular provision is again in chapter 13 and references actions that are to be taken by a major political party, as the term is defined in this chapter by section 17-13-40 of the Code of Alabama. Where a clause or phrase relating to the “same object or subject matter” is repeated throughout an act, such clause or phrase should receive a consistent construction throughout the act. *Ex parte Jackson*, 625 So. 2d 425, 428 (Ala. 1992). The term “political party,” in this provision, references a major political party. The Constitution Party should not be considered a political party as that term is used in chapter 13 of title 17. As such, the Constitution Party is not subject to this particular provision.

On the other hand, section 17-13-52 of the Code of Alabama states as follows:

The *certificate of nomination by any* caucus, convention, mass meeting, or other assembly of any political party or *faction* in this state not conducting a primary election at the expense of the state shall be filed on or before 5:00 P.M. on the primary day to certify their nominees with the judge of probate, in the case of nominations for county office, and with the Secretary of State, in the case of all other offices. Each certificate must have attached thereto a separate sworn statement from the nominee, signed by the nominee, stating that he or she accepts the nomination.

ALA. CODE § 17-13-52 (2006) (emphasis added).

This provision, although found in chapter 13 of title 17, is applicable to any political group seeking to have a candidate on the ballot, and provides the

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mechanism by which that group may submit its certificate of nomination for a candidate. *Id.* This provision is applicable to a minor party, but does not require that the minor political party furnish the probate judge or the Secretary of State with notice of a political meeting.

CONCLUSION

A minor party is not required to have a meeting pursuant to section 17-13-50(b) of the Code of Alabama.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script, appearing to read "G. Ward Beeson, III".

G. WARD BEESON, III

Chief, Opinions Section

LS/MMG

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